Financial Ombudsman Service

complaint

Mr Y complains about instalment loans that he took out with Provident Personal Credit Limited (trading as Satsuma Loans), ("SL"), which he said were unaffordable. The complaint was brought to this service on Mr Y's behalf by a claims management company. But for ease, I shall refer below to all actions being taken by Mr Y.

background

Mr Y was given 14 instalment loans by SL between January 2015 and April 2017. Loan 14 hasn't been repaid. Most of the loans were due to be repaid by weekly instalments. But I have shown below the approximate monthly equivalent amounts. A summary of the loans taken out by Mr Y is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Monthly instalment amounts
1.	15/1/15	29/1/15	£400	3 instalments of £186.68
2.	13/2/15	15/6/15	£900	9 instalments of £180.01
3.	23/10/15	2/11/15	£700	12 instalments of £116.09
4.	6/11/15	20/11/15	£1,000	12 instalments of £165.84
5.	12/2/16	15/2/16	£1,800	12 instalments of £298.48
6.	21/3/16	24/3/16	£1,000	12 instalments of £221.13
7.	29/4/16	9/5/16	£1,800	12 instalments of £298.48
8.	26/8/16	7/9/16	£1,800	12 instalments of £298.48
9.	16/9/16	30/9/16	£1,000	12 instalments of £221.13
10.	6/10/16	2/11/16	£1,000	Around 10 instalments of £200.55
11.	4/11/16	15/11/16	£2,000	12 instalments of £331.67
12.	25/11/16	26/11/16	£1,000	12 instalments of £166
13.	9/12/16	14/12/16	£1,500	Around 9 instalments of unknown amounts
14.	17/4/17	Unpaid	£1,500	12 instalments of £248.73

SL's final response letter only referred to 13 loans. It appears that Loan 13 in my table above wasn't included in SL's final response letter. But SL has sent this service some information about Loan 13 although it hasn't provided us with information about the number of instalments and the instalment amounts for that loan.

SL said that it had carried out a credit check before each loan and asked Mr Y for details of his income and expenditure. SL also applied extra safeguards and buffers to Mr Y's declared expenses to reflect the information it obtained from its credit check. SL said that its checks didn't demonstrate that the loans were unaffordable.

The adjudicator in his view said there were 13 loans. He concluded that SL shouldn't have lent to Mr Y from Loan 5 onwards.

Neither Mr Y nor SL has provided a substantive response to the adjudicator's recommendations. So the complaint has been referred to me, an ombudsman, to consider.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

When SL lent to Mr Y the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

SL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr Y could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr Y's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that SL should fairly and reasonably have done more to establish that any lending was sustainable for Mr Y. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that SL was required to establish whether Mr Y could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr Y's complaint.

SL did a number of checks before it lent to Mr Y. It asked him for details of his income and expenditure. And SL increased Mr Y's declared expenditure in its assessment to reflect what it had seen in its credit checks. I can also see that SL checked Mr Y's housing status. From the information SL gathered, I can see that Mr Y paid rent.

SL also checked Mr Y's credit file before agreeing to the loans. SL has provided this service with a record of its credit checks, although some of the detail in these was difficult to understand. Otherwise, I haven't seen any adverse information on SL's checks that I think should have caused additional concerns to SL. Mr Y has also provided this service with a copy of his credit report and I shall refer to this below.

I think that the checks SL carried out before agreeing Loans 1 to 3 were proportionate. The repayments that Mr Y needed to make on Loans 1 to 3 were relatively modest compared to the income that he declared to SL. The highest monthly repayment for Loans 1 to 3 was £186.68. I don't think the repayments were so large that it's obvious they would've caused Mr Y financial difficulty.

So given Mr Y's repayment amounts, what was apparent about his circumstances at the time, and his history with the lender, I don't think it would've been proportionate for SL to ask him for the amount of information that would be needed to show the lending was unsustainable.

And there wasn't anything in the information Mr Y provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying. So I don't think SL was wrong to give Loans 1 to 3 to Mr Y.

But although Loans 1 to 3 were scheduled to be repaid over a number of months, Mr Y repaid each of them early. The longest loan, Loan 2, lasted four months instead of nine. SL said that Loans 1 and 3 were withdrawn. I note that they were repaid within two weeks of having been taken out with some interest being repaid on the principal borrowed. I think that this behaviour might have caused SL some concerns.

So when Loan 4 was taken out just four days after Loan 3 was repaid, I think a greater level of checks would have been proportionate. The loan amount had increased to £1,000 and was again repayable over 12 months. So, I think it might have been proportionate at this time for SL to have gathered some further information from Mr Y about his other short term borrowing. Had it done so, it's likely that SL would've learnt that Mr Y had borrowed one other short term loan for £770 in the month before Loan 4 but this was repaid around five days later and before Loan 4 was taken out. I've seen this in Mr Y's credit report. I also note that SL had considered Mr Y's expenses to be around £644 higher than Mr Y had declared as a result of what it had seen on its own credit checks. Nevertheless, I can see that the monthly repayments on Loan 4 were sustainably within what SL's checks showed Mr Y's disposable income to be.

Given Mr Y's repayment amounts, what was apparent about his circumstances at the time, and his history with the lender, I don't think it would've been proportionate for SL to ask him for the amount of information that would be needed to show the lending was unsustainable.

And I can't see there was anything in the information Mr Y provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying at this time. So I don't think SL was wrong to give Loan 4 to Mr Y.

Loan 4 was scheduled to be repaid over 12 months, but Mr Y again repaid it early and within two weeks of it having been taken out. SL said that Loan 4 had been withdrawn. I note that Mr Y had repaid some interest on the principal borrowed. I again think that this behaviour might have caused SL some concerns before Loan 5.

The amount of Loan 5 had substantially increased to £1,800 with 12 monthly instalments of £298.48 to be repaid. And Loan 5 was Mr Y's third loan in less than four months. So, I think by the time of Loan 5 it might have been proportionate for SL to have independently reviewed the true state of Mr Y's finances. If it had done so, it would have seen that Mr Y's income from his employment was substantially less than he'd declared at around £1,328. It would also have seen that Mr Y received Disability Living Allowance ("DLA"). I think it's likely that Mr Y had included his DLA as part of the income he declared to SL. While it was Mr Y's choice how to spend that money, I think SL might have considered the likelihood that he needed to pay for additional resources associated with the disability, and so he would have had less disposable income available to repay Loan 5.

SL would also have seen from an independent review that Mr Y was spending a significant percentage of his income on gambling. So I think SL ought to have realised that Mr Y was having problems managing his money and it was unlikely Mr Y would've been able to sustainably repay Loan 5. And as a responsible lender it wouldn't have agreed to lend Loan 5 to him.

I've also looked at the overall pattern of SL's lending history with Mr Y, with a view to seeing if there was a point at which the lender should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so SL should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr Y's case, I think that this point was reached by Loan 6. I say this because:

- Mr Y had taken out a loan of £400 around 14 months earlier and he was now asking for a loan of £1,800. He hadn't made any inroads into his debt over this time and had paid high interest rates to, in effect, service a debt to SL over an extended period.
- Mr Y had repaid each of his loans early. I think that behaviour should have caused concerns to SL.
- There were some very small gaps between loans being repaid and a new loan being granted including one of around four months before Loan 3. But, I don't think it would have been reasonable for SL to conclude these gaps were any indication that Mr Y's finances had moved on from whatever situation had required his previous loans.

I can see that as SL didn't stop lending at this point, Mr Y went on to take out high cost loans for a further 13 months.

I think that Mr Y lost out because SL continued to provide borrowing from Loan 6 onwards because:

- these loans had the effect of unfairly prolonging Mr Y's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the length of time that Mr Y had been taking out short term loans was likely to have had negative implications on Mr Y's ability to access mainstream credit and so kept him in the market for these high-cost loans.

- The fact that most of the loans were repaid doesn't mean that they were repaid sustainably, or without causing Mr Y undue difficulty.

I note that SL had said that its checks didn't demonstrate that the loans were unaffordable. But SL was required to establish whether Mr Y could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. And SL will know from previous decisions (as well as what's set out on our website) that there are cases where this service considers the overall lending pattern and not just the affordability of each loan. When a consumer borrows numerous loans over a long period of time, it's most likely that the loans aren't being used for their intended purpose of temporary cash flow problems. As SL will know, the FCA made it clear in a recent letter to CEOs of high cost lending firms that "a high volume of relending…..may be symptomatic of unsustainable lending patterns". And I think that's the case here.

So I'm upholding this complaint in part and SL should put things right as follows. I understand that there is a balance outstanding on Loan 14. I would remind SL of its responsibility to treat Mr Y in a positive and sympathetic manner about the amounts he should repay.

putting things right – what SL needs to do

- refund all interest and charges Mr Y paid on Loans 5 to 13 and pay interest of 8% simple a year on such refunded interest and charges from the date they were paid to the date of settlement*;
- with regard to Loan 14, refund all the interest and charges that Mr Y has paid on Loan 14, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
- write off any unpaid interest and charges from Loan 14;
- apply the refunds referred to above to reduce any capital outstanding on Loan 14 and pay any balance to Mr Y;
- remove any adverse entries about Loan 5 from Mr Y's credit file; and
- the number of loans taken from Loan 6 onwards means any information recorded about them is adverse. All entries about Loans 6 to 13 should be removed from Mr Y's credit file, and the entry about Loan 14 should be removed once it has been fully repaid.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mr Y a certificate showing how much tax it's taken off if he asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Provident Personal Credit Limited, trading as Satsuma Loans, to:

1. Refund all interest and charges Mr Y paid on Loans 5 to 13 and pay interest of 8% simple a year on such refunded interest and charges from the date they were paid to the date of settlement*;
2. With regard to Loan 14, refund all the interest and charges that Mr Y has paid on Loan 14, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
3. Write off any unpaid interest and charges from Loan 14;

4. Apply the refunds referred to above to reduce any capital outstanding on Loan 14 and pay any balance to Mr Y;
5. Remove any adverse entries about Loan 5 from Mr Y's credit file; and
6. The number of loans taken from Loan 6 onwards means any information recorded about them is adverse. All entries about Loans 6 to 13 should be removed from Mr Y's credit file, and the entry about Loan 14 should be removed once it has been fully repaid.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mr Y a certificate showing how much tax it's taken off if he asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 5 September 2019.

Roslyn Rawson
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